Supreme Court, U.S.
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No. 93-251

In The

Supreme Court of the United States

October Term, 1993

HENRY J. GUIDRY, JR. and
HENRY C. MELIUS,

Petitioners,

versus

MISSISSIPPI UTILITY, INC., PETER J. CASANO, M.P. McLEAN, HOBART G. TRUESDELL, ARTIS E. JAMES, JR. and ABC INSURANCE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

VIRGIL G. GILLESPIE
Bar #: 4843
GILLESPIE & BLESSEY
Attorneys at Law
1719 Beach Boulevard #306
P.O. Box 1930
Biloxi, MS 39533
(601) 374-8441
Fax: 432-0800

Attorney for Respondents, M.P. McLean, Hobart G. Truesdell, and Artis E. James, Jr.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

11 pp

COUNTER-STATEMENT OF THE QUESTION PRESENTED

The eight [8] questions presented by Guidry and Melius, the Petitioners, for review by the Court on Writ of Certiorari are inappropriate for review under Rule 10 of the Supreme Court Rules. They either do not relate to the issues that were before the Fifth Circuit or only marginally relate to such issues.

The issue before the Fifth Circuit dealt with the District Court's denial of class action certification. Guidry and Melius injected several red herrings, but that did not alter the nature of the matter in controversy or the issues presented for review.

The issues currently presented by the Petitioners appear to deal with some secret agenda regarding United States District Court Judge Walter J. Gex, III, who did not hear this case, was not a defendant, but who has undoubtedly ruffled some feathers [real or imaginary] as evidenced by Pages 36-75 of the Petition for Writ of Certiorari in which we encounter agreements and matters involving Judge Gex which are not the part of any record either in the District Court or in the Fifth Circuit Court of Appeals.

The real issue raised by Appellant's Petition for Writ of Certiorari is, "What should be done to the Petitioners or their attorney for filing this unwarranted, unprecedented, and uncalled for attack upon Judge Walter J. Gex, III?" The Court cannot allow itself to be used in the manner requested in the Petition for Writ of Certiorari.

COUNTER-STATEMENT OF THE QUESTION PRESENTED – Continued

The administration of justice is far too dignified to allow its perversion into an arena for the private agenda of disgruntled citizens.

LIST OF PARTIES

M.P. McLean
Hobart G. Truesdell
Artis E. James, Jr.
Defendants/Respondents
Represented by:
Virgil G. Gillespie
Gillespie & Blessey
1719 Beach Boulevard – Suite 306
Biloxi, Mississippi 39531

Mississippi Utility, Inc.
Peter J. Casano
Defendants/Respondents
Represented by:
Walter J. Phillips
P.O. Box 128
Bay St. Louis, Mississippi 39520

Henry J. Guidry, Jr.
Henry C. Melius
Plaintiffs/Petitioners
Represented by:
William J. Manion
P.O. Box 1776
Slidell, Louisiana 70459

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Opinions and Orders from the Courts below were omitted from the body of Appellant's Petition, but were included in Appellant's Appendix. Therefore, please direct your attention to:

CITATIONS PAGES

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. Feb. 7, 1992) (memorandum opinion denying class certification) ..... App. A 1-7

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E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. 92-7144 (5th Cir. May 12, 1992) (granting appellee's motion to dismiss) ..... App. A 10

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. July 13, 1992) (denying plaintiff's motion to vacate) ..... App. A 11

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. Sept. 25, 1992) (denying plaintiff's motion to reconsider) ..... App. A 14-17

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. Sept. 25, 1992) (dismissing certain plaintiffs and dismissing remaining plaintiffs with prejudice to proceed individually) ..... App. A 25-29

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. 92-7699 (5th Cir. May 21, 1993) (affirming S.D. Miss. decision) ..... App. A 34-35

COUNTER-STATEMENT OF THE CASE

This matter was originally initiated on February 16, 1990, by the filing of a Complaint by fifty-three [53] persons purporting to be the members of a class. The relief sought seems to involve fraud, breach of contract, and there is a demand for monetary damages, not in favor of the individual members of the purported class but rather in favor of an entity [not a party] known as the Diamondhead Water and Sewer District. The exact nature and make up of the class is uncertain. Not only are the members of the class not identified or defined, but the relief sought is not requested on behalf of the class but rather by way of awarding a cash settlement to a non-litigant and ordering eminent domain of property owned by parties also not made a party to the complaint. The prayer for relief contains a demand of $6,000,000.00 to be awarded to the Diamondhead Water and Sewer District; that Mr. Casano be repaid $1,000.00; that the Court allow someone [not identified] to institute eminent domain proceedings against property not specifically defined and owned by a person or persons not parties to the Complaint and not adequately defined. The only other relief was the prayer that Mr. Manion, the attorney, be awarded fifteen per cent [15%] as an attorney fee.

Numerous motions were filed throughout the proceeding which were obscure and unintelligible, with one requesting a referendum among the purported class to determine their objectives. The pleadings in this matter have not only been obscure, rambling, and disjointed, but state no cause of action cognizable by our jurisprudence and seek no relief which either the District or Appeals Court was able to afford. The purported class action

Plaintiffs failed to sustain their burden of proof regarding the existence of a class pursuant to Rule 23 of the *Federal Rules of Civil Procedure.*

On October 4, 1991, Appellant's Counsel filed a motion for leave to file a supplemental complaint and add defendants. [Record on Appeal, Volume 4, Page 975; Record Excerpt No. 15]. Counsel for Appellees McLean, Truesdell, and James agreed to the addition of parties. [Record on Appeal, Volume 6, Page 1086]. However, no order was ever presented to counsel or the Court to accomplish such addition.

The District Court entered a Memorandum Opinion of February 7, 1992, and an Order on February 27, 1992. This Order denied class certification and directed the Plaintiffs to amend and proceed with individual actions within twenty [20] days. Thereafter, the Plaintiffs attempted to appeal to the Fifth Circuit and the same was denied by Order entered May 12, 1992. App. A 10. The matter then came back to the District Court and after numerous conferences and additional pleadings and affidavits, a final Order was entered dismissing the action of the Plaintiffs. App. A 25-29. Plaintiffs appealed a second time to the Fifth Circuit which affirmed the District Court's dismissal on May 21, 1993. App. A 34-35.

SUMMARY OF ARGUMENT

Petition should be denied because Appellants wholly fail to state grounds upon which this Court has jurisdiction. Nothing in the Petition qualifies this case for a Writ of Certiorari under Supreme Court Rule 10.

ARGUMENT: REASONS FOR DENYING THE WRIT

The Petition fails to recite any special and important reasons for any departure from the accepted and usual course of judicial proceedings which call for an exercise of the Court's supervision.

The petition should be denied because it completely lacks any "special and important reasons" for the granting of it as required by this Court's Rule 10.1. There is no conflict between the Fifth Circuit's judgment, of which review is sought, and any other federal court of appeals. Nor was said judgment "so far departed from the accepted and usual course of judicial proceedings" as to call for this Court's intervention as required by Rule 10.1(a).

This was a simple case in which Petitioner's request for class certification was denied. There is nothing spectacular or unusual for both the District and Appeal Courts to deny class certification to a few individuals where they are both improper and unrepresentative of a pool of unwilling, yet maybe, Plaintiffs.

The Supreme Court is no place for Petitioners to institute new arguments, create fictitious fact situations, or malign the character and integrity of Federal District Court Judges, where these issues were not within the purview of the Courts below. The Petitioners present no genuine facts or law for review, only misstatements of reality in their "Statement of Issues" and "Argument". This is a matter best left to the lower courts' discretion. Granting a writ of certiorari in this case would be particularly inappropriate.

CONCLUSION

There is nothing in Guidry's and Melius' entire Petition that remotely satisfies the prerequisites outlined in this Court's Rule 10, which would permit review. Therefore, the following relief is requested:

1. Denial of Writ of Certiorari and affirmation of the Fifth Circuit Judgment.

2. Pursuant to this Court's Rule 8.2, Respondents request appropriate disciplinary action against W. J. Manion for conduct unbecoming a member of the bar or for failure to comply with the Rules of this Court.

3. Following this Court's Rule 43.1, Appellees request that costs be paid by Petitioners.

4. Under this Court's Rule 42.2, Appellees seek single or double costs from Appellants, as well as damages in an amount deemed appropriate by this Court, due to the frivolous nature of this Petition.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

VIRGIL G. GILLESPIE
MS Bar No. 4843
GILLESPIE & BLESSEY
1719 Beach Boulevard – Suite 306
Biloxi, Mississippi 39531
P.O. Box 1930
Biloxi, Mississippi 39533
(601) 374-8441

Attorney for
M.P. McLean, Hobart G. Truesdell, and Artis E. James, Jr.